

# **EXHIBIT 4**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

U.S. BANK NATIONAL ASSOCIATION, in  
its capacity as Trustee, JOSHUA N. TERRY,  
and ACIS CAPITAL MANAGEMENT, L.P.,

*Plaintiffs,*

v.

Case No. 1:21-cv-11059-GHW

THE CHARITABLE DONOR ADVISED  
FUND, L.P., CLO HOLDCO LTD., and  
NEXPPOINT DIVERSIFIED REAL ESTATE  
TRUST,

*Defendants.*

**PLAINTIFFS' SECOND SET OF REQUESTS FOR PRODUCTION TO DEFENDANTS  
THE CHARITABLE DONOR ADVISED FUND, L.P. AND CLO HOLDCO LTD.**

Pursuant to Federal Rules of Civil Procedure 26 and 34, and any other applicable federal or local rules, Plaintiffs U.S. Bank National Association, in its capacity as Trustee, Acis Capital Management, L.P. and Joshua N. Terry (collectively, the "Plaintiffs") hereby request that You (as defined below) produce for inspection and copying all documents responsive to the following individual requests (collectively, the "Requests," and each, a "Request").

**DEFINITIONS**

In addition to the Definitions that are set forth in Plaintiffs' First Request for the Production of Documents, dated April 14, 2023, which Plaintiffs incorporate as if set forth in full herein, the following additional terms shall have the following meanings:

1. "Amended Counterclaims" means the amended counterclaims that HCLOF filed on July 8, 2023 (Dkt. 155).

2. "HarbourVest" means any and all of HarbourVest Dover IX Investment L.P., HarbourVest 2017 Global AIF L.P., HarbourVest 2017 Global Fund L.P., HV International VIII Secondar L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, LLC.

3. "Kirschner Litigation" means the proceeding *Mark S. Kirschner, as Trustee of the Litigation Sub-Trust v. Dondero et al*, Adversary Proceeding in the United States Bankruptcy Court for the Northern District of Texas, Matter No. 21-03076-sgj, which is referenced at Paragraph 51 n.24 of the Amended Counterclaims.

4. "Members Agreement" means the November 15, 2017 HCLOF Members Agreement attached as Exhibit 2 to the Amended Counterclaims (Dkt. 155-2).

5. "Reserves" means the reserves that You allege Plaintiffs withheld in Paragraph 35 of your Amended Counterclaims.

6. "You" or "Your" means any one or more of the following Persons or Entities: The Charitable Donor Advised Fund ("DAF"), CLO HoldCo Ltd. ("CLOH"), any predecessor, successor, assignee, or assignor of the foregoing, as well as any of their affiliates, divisions, 7 departments, subsidiaries, joint ventures, subcontractors, agents, employees, partners, managers, members, lawyers, representatives, and any other Person acting on their behalf

### **INSTRUCTIONS**

Plaintiffs incorporate the Instructions that are set forth in Plaintiffs' First Request for the Production of Documents, dated April 14, 2023, as if set forth in full herein.

### **DOCUMENT REQUESTS**

#### **DOCUMENT REQUEST NO. 43.**

Documents and Communications Concerning Your understanding of HCLOF's obligations to You between January 1, 2017 and the present.

**DOCUMENT REQUEST NO. 44.**

Documents and Communications Concerning the negotiation, drafting, and execution of the Members Agreement between January 1, 2017 and November 15, 2017.

**DOCUMENT REQUEST NO. 45.**

Documents Concerning the meaning of Section 20.5 of the Members Agreement between January 1, 2017 and the present.

**DOCUMENT REQUEST NO. 46.**

Documents Concerning the meaning of Sections 14.4-14.4.4 of the Members Agreement between January 1, 2017 and the present.

**DOCUMENT REQUEST NO. 47.**

Communications with HCLOF and its directors Concerning HarbourVest, the Reserves and/or the Members Agreement, including but not limited to any demand made.

**DOCUMENT REQUEST NO. 48.**

Documents and Communications Concerning the alleged tortious interference with the Members Agreement by Plaintiffs.

**DOCUMENT REQUEST NO. 49.**

Documents sufficient to show all fees and expenses You have incurred in the Kirschner Litigation.

**DOCUMENT REQUEST NO. 50.**

Documents and Communications Concerning Your allegation that “HCLOF’s Directors are financially beholden to HCM” and “are financially incentivized to comply with HCM’s directives because HCM controls their compensation awards.” Amended Counterclaims ¶¶ 4, 50.

**DOCUMENT REQUEST NO. 51.**

Documents and Communications Concerning Your allegation that “HCLOF has been in a wind-down mode for over three years.” Amended Counterclaims ¶ 6.

**DOCUMENT REQUEST NO. 52.**

Documents and Communications Concerning the “public statements” that You allege HCLOF made “regarding the withholding of funds.” Amended Counterclaims ¶ 48.

Dated: New York, New York  
July 21, 2023

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served by email to all counsel of record on July 21, 2023.

*/s/ Misha Boutilier*  
Misha Boutilier